

May 1, 2007

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

400 Yesler Way, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654
Email: hearex@metrokc.gov

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E06G0200**

JOSEPH & JACKI PRUSS
Code Enforcement Appeal

Location: 18211 – 240th Avenue Southeast, Maple Valley

Appellants: Joseph & Jacki Pruss
represented by **Paul P. Carkeek**
P.O. Box 588
Preston, Washington 98050
Telephone: (425) 222-5662

and

Duana Koloušková, Attorney
Johns Monroe Mitsunaga PLLC
1601 – 114th Avenue Southeast, Suite 110
Bellevue, Washington 98004-6969
Telephone: (425) 451-2812
Facsimile: (425) 451-2818

King County: Department of Development and Environmental Services (DDES)
represented by **Holly Sawin**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-6772
Facsimile: (206) 296-6604

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:
Department's Final Recommendation:
Examiner's Decision:

Deny the appeal
Deny the appeal
Grant the appeal

ISSUES & TOPICS ADDRESSED:

- Clearing without a permit
- Scope of residential building permit
- Native growth retention area covenant
- Vesting

SUMMARY OF DECISION:

The property owner's appeal of a notice of code violation for clearing without a permit is granted.

EXAMINER PROCEEDINGS:

Hearing opened:

April 19, 2007

Hearing closed:

April 19, 2007

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On October 4, 2006, the King County Department of Development and Environmental Services issued a notice of King County code violation, civil penalty order, abatement order, notice of lien, duty to notify ("Notice and Order") to Jacki and Joseph M. Pruss. The property subject to the Notice and Order is located at 18211 – 240th Avenue Southeast (Maple Valley) in unincorporated King County. Jackie and Joseph M. Pruss are the owners of the subject property.

The Notice and Order alleged violation of the King County Code for clearing in excess of 7,000 square feet without a clearing permit.

2. A timely appeal of the Notice and Order was filed by Jackie and Joseph M. Pruss on October 12, 2006 and a statement of appeal was filed on October 30, 2006. The statement of appeal asserts that the appellants' clearing on the subject property was not in violation of KCC 16.82.050 and 16.82.051; that the clearing was in compliance with residential building permit B02Q0002; and that the clearing was authorized by a native growth retention area (NGRA) easement agreement prepared by King County and accepted and recorded by the appellants.
3. The subject property is adjacent to 240th Avenue Southeast and Southeast 132nd Street, within the plat of Webster Lake Estates. The west boundary of appellants' lot is adjacent to a 100 foot wide (average) buffer of the Webster Lake wetland. The westerly 15 feet of appellants' lot is subject to a 15 foot wide building setback line. On September 11, 2001, appellants applied for, and on December 12, 2001, King County issued residential building permit B01L1260, for a single-family dwelling to be constructed on the subject property. A revised building permit, #B02Q0002, was approved in 2002 and remains open.

The initial and revised building permits were approved by DDES in accordance with the King County code and regulations in effect in 2001, including the 1998 Surface Water Design Manual. The approval was subject to conditions for small site and targeted drainage review, based upon, “. . . the attached site plan, a visit to the site, and additional information researched and reviewed. . .” (exh. no. 6, page 1 of 5). The permit states:

“This project is adding less than 10,000 square feet of new impervious surface and clearing less than 2 acres or 25% of the site, whichever is greater. . .”

“A clearing easement has been recorded against the title of the property. The areas as shown on the attached site plan will remain in ‘native growth retention area’.”

4. As part of the review and approval process for the building permit, King County prepared a document “Forested Open Space and Native Growth Retention Area Covenant.” The document provides, in consideration of the approved King County Building Permit, that the appellants establish upon their lot a native growth retention area “. . . subject to restrictions applying to vegetation removal in all designated areas shown in Attachment (A). . .”, and that, “The property within the native growth protection area (shown in Attachment A) shall be maintained in a forested condition. . .”

The appellants recorded the native growth retention area covenant prepared by DDES in order to obtain the benefit of “small site” drainage review pursuant to the option available in the 1998 King County Surface Water Design Manual. The native growth retention area easement is at the westerly end of the subject property. The appellant’s home and associated improvements were constructed at the easterly end of the property (close to 240th Avenue Southeast). The intervening area was contemplated by the property owners to be utilized for a pool, lawn and landscaping.

5. The King County Code, KCC 16.82.050, provides that, unless specifically excepted (under KCC 16.82.051), a person shall not do any clearing or grading without first having obtained a clearing and grading permit *or having all clearing and grading reviewed and approved by DDES as part of another development proposal*. KCC 16.82.050.B.

It is the general practice in King County that the clearing associated with the development of a lot with a single-family residence is considered and encompassed within the review and approval of the residential building permit.

The approval of improvements on the easterly portion of the property, and the establishment of a native growth retention area on the westerly portion, is indicative of the entire site having been reviewed by DDES. The absence of any restriction on clearing within the intervening portion of the site not subject to the Native Growth Retention Area Covenant, with the absence of any statement or warning to the contrary, would lead a reasonable person to believe that there was no restriction on clearing or landscaping the balance of the site for uses normally associated with a single-family residence.

Prior to the clearing in issue, the appellant, Jacki Pruss, visited DDES and advised a counter employee that she intended to do this clearing, and inquired as to what, if anything, was necessary. She was advised to obtain a burning permit from the fire district to enable her to

dispose of some or all of the land clearing debris by burning. She was not advised that any permit in addition to the open building permit for the site was needed.

6. The King County Code in effect at the time the appellants' building permits were applied for and approved also provided an exception to the requirement for a clearing or grading permit for "clearing or grading within a preliminarily or finally approved residential plat. . .", unless within a regulated sensitive area or sensitive area tract or easement. KCC 16.82.050.A.9. (exh. no. 10, attachment F). The area where the clearing occurred was not within a regulated or sensitive area under the codes in effect at the time of issuance of the appellants' building permits.
7. Even if the area of the subject property lying between the native growth retention area and the improvements constructed on this property had not, in fact, been reviewed by DDES during the review of the 2001 and 2002 building permit applications, a later review of clearing associated with the landscaping of the property, or of proposed changes to the surface water drainage design, normally would be considered as a review of a minor modification to the existing permit. These modifications would not result in a substantial change in this project's review requirements. In the present situation, a substantial change was made to the King County Code during the time between the original building permit application and the time when the clearing in issue occurred on the appellants' property. DDES determined that the clearing on appellants' property became a significant modification to the existing permit because of the change in the County Critical Areas Code, the imposition of rural clearing standards, and the possibility that a SEPA review would be required.

CONCLUSIONS:

1. The development of the subject property, lot 26 of the plat of Webster Lake Estates, was reviewed by King County DDES as a part of the review and approval by DDES of the Appellants' application for a residential building permit in 2001, and a revised residential building permit in 2002.

The residential building permit issued by DDES for the subject property authorized clearing of the site for landscaping and other purposes ancillary to the appellant's dwelling, except for the area within the Native Growth Retention Area (NGRA) designated by DDES in the NGRA covenant.

2. The construction of appellant's residence and associated site development was vested to the King County Code in effect at the time the appellants' application for a residential building permit was complete. That date was on or before December 12, 2001.
3. Even if the clearing in issue had not been authorized by the initial review and approval of the building permit application, changes that were made to the King County Code or other development regulations subsequent to December 12, 2001 could not be considered when making a determination as to whether the appellant's site clearing would result in a substantial change in the project's review requirements. The clearing on the appellant's site was for the purpose of improving and enhancing landscape associated with their residence, and was not a significant modification to their proposal that would result in a substantial change in the project's review requirements under the King County Code in effect on December 12, 2001.

DECISION:

The appeal by Joseph and Jacki Pruss from the Notice of King County Code Violation issued October 4, 2006 is GRANTED.

Review of modifications to the appellant's drainage plans for the site should be made in accordance with the King County Codes and Surface Water Design Manual and other development regulations in effect on the date that the application for building permit B01L1260 was determined by DDES to be complete.

ORDERED this 1st day of May, 2007.

James N. O'Connor
King County Hearing Examiner *pro tem*

TRANSMITTED via certified mail this 1st day of May, 2007, to the following parties:

Joseph & Jacki Pruss	Paul P. Carkeek	Duana Koloušková
18211 – 240th Ave. SE	Eco-Siate	Johns Monroe Mitsunaga PLLC
Maple Valley, WA 98038	P.O. Box 588	1601 – 114th Ave. SE, #110
	Preston, WA 98050	Bellevue, WA 98004

TRANSMITTED this 1st day of May, 2007, to the following parties and interested persons of record:

Paul Carkeek	Duana Koloušková	Joseph & Jacki Pruss
Eco-Site	Johns Monroe Mitsunaga PLLC	18211 - 240th Ave. SE
PO Box 588	1601 - 114th Ave. SE, #110	Maple Valley WA 98038
Preston WA 98050	Bellevue WA 98004	
Deidre Andrus	Elizabeth Deraitus	Jo Horvath
DDES/LUSD	DDES/LUSD	DDES/BSD
MS OAK-DE-0100	MS OAK-DE-0100	MS OAK-DE-0100
Bernard Moore	Lamar Reed	Holly Sawin
DDES/BSD	DDES/LUSD	DDES/LUSD
MS OAK-DE-0100	MS OAK-DE-0100	MS OAK-DE-0100
Toya Williams		
DDES/LUSD		
MS OAK-DE-0100		

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE APRIL 19, 2007, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E06G0200.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin, David Casey, Gary Downing and Randy Sandin, representing the Department; Duana Koloušková, representing the Appellant, and Joseph and Jacki Pruss, the Appellants.

The following Exhibits were offered and entered into the record:

- | | |
|---------------|--|
| Exhibit No. 1 | DDES staff report to the Hearing Examiner |
| Exhibit No. 2 | Party of record list |
| Exhibit No. 3 | Copy of the Notice & Order issued October 4, 2006 |
| Exhibit No. 4 | Copy of the Appeal Statement received October 30, 2006 |
| Exhibit No. 5 | Copies of codes cited in the Notice & Order |
| Exhibit No. 6 | Approved Building Permits B01L1250/B02Q0002 site plan and conditions |
| Exhibit No. 7 | Photographs of subject property |
| Exhibit No. 8 | B01L1260/B02Q002 permit record letter dated October 9, 2001 from Mark Doucet, Site Engineering and Planning to Joe & Jacki Pruss |
| Exhibit No. 9 | Emails between Jim Chan, Supervisor, King County Site Engineering and Tom Redding, Baima & Holmberg dated January 24, 2007 |

JNOC:gao
E06G0200 RPT